
Application Decision

by **Richard Holland**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 11 December 2017

Application Ref: COM 3183093

Stroud Green Common, Newbury, Berkshire

Register Unit No: CL10

Commons Registration Authority: West Berkshire District Council.

- The application, dated 17 August 2017, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by West Berkshire District Council.
 - The works to extend an existing children's play area comprise:
 - (i) installation of seven pieces of under 5 age group play equipment on a new 45m² rubber mulch surface; and
 - (ii) 31 metres of 1.2 metre high metal bow-top fencing to enclose the new area and link with existing similar fencing.
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Decision

1. Consent is granted for the works in accordance with the application dated 17 August 2017 and accompanying plan, subject to the condition that the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy¹ in determining this application under section 38, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
4. This application has been determined solely on the basis of written evidence.
5. No representations were received about the application.
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
 - a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);

¹ Common Land Consents Policy (Defra November 2015)

- b. the interests of the neighbourhood;
- c. the public interest;² and
- d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

7. The land is owned by the applicant, West Berkshire District Council (the Council). The common land register records various rights to graze animals, collect wood and excavate gravel. The Council has advised that none of the rights are exercised. There is no evidence before me to suggest that the works will harm the interests of those occupying or having rights over the land.

The interests of the neighbourhood and the protection of public rights of access

8. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with interests of public access. The proposed extension to the existing play area is to cater for children aged 2-5 years, who are not catered for at all at present. The play area is located towards the eastern boundary of the common and is adjacent to a footpath leading from a nearby access point onto the common from the neighbouring residential area.
9. The proposed extension will fence in an area that is currently freely available to local people and the public alike, although the Council has advised that the area is currently used only for general access and has no special use that would be lost. The Council has also advised that the proposal is in response to requests from local people to provide play facilities for pre-school children at the site.
10. The area to be enclosed is 45m², which equates to less than 0.05% of the total area of the common. I consider the provision of play facilities requested by the local community to be in the interests of the neighbourhood and that it outweighs the negligible loss to the wider public of such a small area of common land. Furthermore, I consider the proposed fencing, which will include two self-closing access gates for use by all, to be a reasonable measure to prevent dogs from entering and fouling the play area.

Nature conservation

11. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

12. The common has no special landscape designation. The Council consulted the North Essex Downs Area of Outstanding Natural Beauty (AONB) Board but subsequently confirmed that it had done so in error as the land does not lie within the AONB boundary.
13. Whilst the proposed fencing will have some impact on the openness of the common, I consider that this will be negligible as the length of fencing is short and will be seen in the context of the existing matching fencing, which it will adjoin. Similarly, the new play equipment (including the rubber mulch surface) will be seen in the context of the existing equipment which is likely to be larger as it is for the use of older children and therefore

²Section 39(2) of the 2006 Act provides that the public interest includes the public interest in; nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest.

more visible. In any case, the proposed equipment is of a type likely to be found in a children's play area and I am satisfied that any limited visual impact will be outweighed by the benefits from the increased amenity value of the common that the improved recreational facilities will bring.

Archaeological remains and features of historic interest

14. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

Conclusion

15. I conclude that the proposed works will benefit the interests of the neighbourhood by enhancing play facilities on the common and will not harm the other interests set out in paragraph 6 above. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland

